



An
Bord
Pleanála

Inspector's Report ABP-318367-23

Development	<i>Increased roof height and installing new roof light windows to rear of dwelling with internal modifications.</i>		
Location	<i>Ballycar Road, Newmarket-on-Fergus, Co. Clare.</i>		
Planning Authority Ref.	<i>23/60319.</i>		
Applicant(s)	<i>Liesa Comte.</i>		
Type of Application	<i>Retention Permission</i>	PA Decision	<i>Refuse</i>
Type of Appeal	<i>First Party</i>	Appellant	<i>Liesa Comte</i>
Observer(s)	<i>None</i>		
Date of Site Inspection	<i>04-04-2024 & 11-04-2024</i>	Inspector	<i>Adam Kearney</i>

Context

1. Site Location/ and Description

The subject dwelling is located on Ballycar Rd (R430) 350m east of Newmarket on Fergus village core in County Clare. The property consists of a modified traditional detached single storey cottage with attic accommodation (75m²) on a stated site area of 0.62 Ha. The property is technically within but on the eastern extremity of an area designated as an Architectural Conservation Area (ACA). To the south of the property is a terrace of dwellings dating back to the mid-20th century and a GAA sports ground. To the west separated by an access driveway is a terrace of single and two storey dwellings (in that order) significantly older than the terrace to the south and modified in part to offer a more modern façade closest to the subject dwelling. To the east is a detached dwelling on a large plot fronted by a stone wall

2. Description of development

The applicant is seeking to retain an increase in roof height and the installation of roof light windows to rear of dwelling with internal modifications.

3. Planning History

None of relevance

4. National/Regional/Local Planning Policy (see attached)

The Clare County Development Plan 2023-2029 is the relevant plan. The site is within the settlement of Newmarket on Fergus on lands zoned Existing Residential

Existing Residential

The objective for land zoned 'existing residential' is to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and for uses that enhance existing residential communities. Existing residential zoned land may also provide for small-scale home-based employment uses where the primary residential use will be maintained.

ACA

The subject property is within the Architectural Conservation Area of Newmarket on Fergus.

CDP16.1

It is an objective of Clare County Council:

- a) To ensure the protection of the architectural heritage of County Clare through the identification of Protected Structures, the designation of Architectural Conservation Areas, the safeguarding of historic gardens, and the recognition of structures and elements that contribute positively to the vernacular and industrial heritage of the county; and
- b) To ensure that the archaeological and architectural heritage of the county is not damaged either through direct destruction or by unsympathetic developments.
- c) To support and promote architectural vernacular skills training and facilities in the county

CDP16.4

It is an objective of Clare County Council:

- a) To seek the retention, appreciation and appropriate revitalisation of the vernacular heritage of County Clare, in towns, villages and rural areas, by discouraging the replacement of good quality vernacular buildings with modern structures and by protecting vernacular buildings where they contribute to the character of an area or settlement and/or where they are rare examples of a structure type
- b) To support proposals to refurbish vernacular structures that are in a substandard or derelict condition, provided that:
 - I. Appropriate traditional building materials and methods are used to carry out repairs to the historic fabric;
 - II. Proposals for extensions to vernacular structures are reflective and proportionate to the existing building and do not erode the setting and design qualities of the original structure which make it attractive

III. Direction for the design is taken from the historic building stock of the area, though it can be expressed in contemporary architectural language; and
(c) To ensure that visitor pressures from tourism associated with built and cultural heritage do not impact negatively on the capacity of local services (including water, wastewater) or facilities such as car parking.

CDP16.5

It is an objective of Clare County Council:

- a) To ensure that new developments within or adjacent to an ACA respect the established character or context of the area and contribute positively to the ACA in terms of design, scale, setting and material finishes;
- b) To protect from demolition or removal and non-sympathetic alterations, existing buildings, structures, groups of structures, sites, landscapes and features such as street furniture and paving, which are considered to be intrinsic elements of the special character of the ACA;
- c) To ensure that all new signage, lighting, advertising and utilities to buildings within an ACA are designed, constructed and located in a manner that does not detract from and is complementary to the character of the ACA; and
- d) To ensure that external colour schemes in ACAs enhance the character and amenities of the area and reflect traditional colour schemes.

CDP17.7 It is an objective of the Development Plan:

- a) To facilitate a co-ordinated and proactive approach to address vacancy in the Plan area, including liaising with owners, identifying barriers to use and examining design solutions proposed by owners to resolving identified difficulties;
- b) To facilitate/promote the alternative beneficial use of vacant property where the proposal will not negatively impact on the amenity of adjoining properties, the environment or movement/transport in the area;
- c) To continue to identify vacant Council-owned buildings and enterprise spaces in settlements in the County and work to maximise occupation of existing vacant buildings and brown field sites; and

d) To target the reversal of rural decline in the core of small towns and villages through sustainable targeted measures that address vacant premises and deliver sustainable reuse and regeneration outcomes.

5. Natural Heritage Designations

Lough Gash Turlough SAC (site code 000440) c. 1km

Lower R Shannon SAC, R Shannon & R Fergus SPA (site code 004064) c. 4km

Development, Decision and Grounds of Appeal

6. PA Decision

Refuse Permission for the following reason

The subject site is located on lands zoned as 'existing residential' and within the Architectural Conservation Area (ACA) of Newmarket on Fergus as set out in the Clare County Development Plan 2023-2029. Under CDP 16.5 it is an objective to ensure that new developments within or adjacent to an ACA respect the established character and context of the area and contribute positively to the ACA in terms of design, scale, setting and material finishes. Having regard to the nature of works as carried out to date for which retention permission is sought, it is considered that the proposal by reason of its design, form, proportions and material finishes, would adversely affect the Architectural Conservation Area. Furthermore aspects of the proposal would overhang (fascia and soffit) and overlook (window on eastern elevation) onto adjoining properties. The proposed development would therefore be injurious to the visual and residential amenities of the area, would set an undesirable precedent for other such developments at this location, and would be contrary to the proper planning and development of the area.

7. First Party Appeal.

Grounds:

- *Will be remedying the external plaster finish*
- *With regard the Architectural Conservation Area, was unable to salvage the original doors and windows due to severe degradation but made an effort to replace like with like within reason*

- *Fascia and soffit have been rectified and there was previously an overhang as per a supporting image*
- *With regard to the gable window, this always existed, and it has been made smaller and was previously 'see through' and not frosted*

8. PA Response

Area Planner response to appeal:

- The subject structure is a vernacular structure in an Architectural Conservation Area
- It is considered that such structures in ACA's should be altered in a sensitive manner.
- This is considered important both in terms of the subject structure and in terms of the precedent that may be set for other such Development at this location and within the ACA of Newmarket on Fergus.
- Clare County Council respectfully requests that An Bord Pleanala uphold the decision of the Planning Authority in this case.

Conservation Officer Response to original application:

The Conservation Officer has raised concerns as regards how the older structure on this site has been altered in the past and as regards the construction methods used and the materials used. The concerns raised can be summarized as follows.

- The design and form of the raised roof height to the former cottage on this site is not in keeping with the vernacular style and form of the existing/ former cottage, which was of merit.
- The materials as have been used in the works as have been carried out to the cottage, in particular the fascia and soffit which are of PVC and which have replaced more appropriate traditional materials, and the materials as used on the roof light on the front of the roof space, are not appropriate and detract from the character of the former vernacular cottage on this site.
- The works as have been carried out to the cottage are not in keeping with the provisions of Objective CDP 16.1 'Architectural Heritage' and Objective

CDP16.4 'Revitalization of Vernacular Heritage' of the Clare County Development Plan 2023-2029.

- Refusal of permission may be appropriate.

Environmental Screening

9. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

10. AA Screening

Having regard to the modest nature and scale of development, location in an urban area with connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

2.1. I have reviewed the proposal in light of the Clare County Development Plan 2023 – 2029 (CDP) and my site visit. Accordingly, I consider that this appeal should be assessed under the following headings:

- *Principle of Development*
- *Dwelling Design and Visual Amenity in the context of the ACA*
- *Possible Encroachment*

2.2. *Principle of Development*

Retention permission is being sought for works carried out to an existing derelict structure in an urban area. The works involved raising the eaves /roof level and incorporating new roof windows to the rear slope. Not included in the description are revisions to an existing gable opening on the east facing elevation and the roof window at the front. I do not have the benefit of pre-development drawings or comprehensive imagery so cannot definitively state if these alterations should be included in the development description as elements to be retained.

The raised roof however is a new component/extension in its own right and 'as built' incorporates windows at the front and rear that are included in the submitted drawings for retention and this is sufficient to make the extent of the works to be retained clear to observers.

I am satisfied having reviewed the extent and scale of the alterations that these works which were carried out to an existing dwelling in an urban area and where the lands are zoned existing residential and notwithstanding the ACA designation can be deemed acceptable in principle.

2.3. *Dwelling Design and Visual Amenity in the context of the ACA*

The applicant has carried out works to an existing derelict cottage that is not included in the Record of Protected Structures (RPS), but which is located within an ACA.

While I note the ACA boundary and the inclusion of the subject property along with dwellings immediately to west and a terrace to the south, I am of the view that the established pattern of development and existing character of the area is quite mixed in terms of different styles and designs of dwelling from different eras. While the subject dwelling and the dwellings to the west do hold a simple and attractive architectural quality, I am not convinced that the quality of streetscape in the immediate area in general terms warrants inclusion in the village ACA area.

For properties within an ACA there is a stated objective (CDP16.5)

‘to protect from demolition or removal and non-sympathetic alterations, existing buildings, structures, groups of structures, sites, landscapes and features such as street furniture and paving, which are considered to be intrinsic elements of the special character of the ACA’.

I note that the dwelling was refurbished and is now occupied which is a positive outcome. I have viewed the limited images provided of the pre-development condition of the dwelling and have viewed the refurbished property and while the level of workmanship is questionable as acknowledged by the applicant, overall the end product is neutral when one considers the vacant/derelict condition heretofore, and although I have some misgivings about the front facing roof window, I do not view its inclusion as being so offensive as to warrant a refusal of retention permission or see a need to seek its removal or a change to its material fabric given its modest scale and given the widespread use of white PVC in the vicinity.

The raised roof is exacerbated by the failure to blend the renders, but this could be achieved with a re-render or external painting.

I also note the comments of the Conservation Officer and while I note that there are misgivings about the materials used in the roof alterations, I do not detect strong opposition to the works in their contribution.

In summary, I believe once the rendering has been attended to, the alteration to the cottage will not prove to be an incongruous intervention in the streetscape at this location and the development to be retained will not impact on the character of the ACA at this location.

2.4. Encroachment

A submission on the original application from the neighbour to the east had concerns over encroachment of rainwater goods that have replaced barges and an east facing gable window that was moved/altered. There is no observation from this party attached to the appeal and from the content of the submission I believe the sole issue was the overhanging rainwater goods and the gable window which they had asked to be obscured.

I note from the appellants documentation and imagery that historically there was a slight overhang associated with the former barge on the old roof.

The new arrangement does not appear to be significantly in excess of this overhang and any exceedance could be deemed negligible.

I consider that the overhang is not excessive and there are no rainwater downpipes discharging onto 3rd party lands.

With regard to the gable window I would consider a sash vertical mechanism or inward operation sensible given that the gable doubles as the common boundary.

In summary the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision

3.0 Recommendation

- 3.1. I recommend that the decision of the PA be overturned and that permission for the development be Granted.

4.0 Reasons & Considerations

Having regard to the location of the development to be retained within an urban area zoned Existing Residential in the Clare County Development Plan 2023 - 2029, the scale and extent of the development to be retained, the pattern of development in the vicinity and subject to compliance with the conditions set out below, it is considered that the proposed development would not seriously injure the visual or residential amenities of the area or of property in the vicinity and would not detract from the integrity or character of the ACA at this location. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions:

1.	<p>The development shall be retained in accordance with the plans and particulars lodged with the application except as may otherwise, be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be retained and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health and to ensure a proper standard of development.</p>
3.	<p>The external render shall be made good to give a uniform appearance and the east facing common boundary gable window shall be a vertical sash style of inward opening operation only.</p> <p>Reason: In the interest of orderly development and residential amenity</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Name: Adam Kearney

Planning Inspector

Date: 08-07-2024

Notes:

The applicant is advised that in relation to issues pertaining to possible encroachment/over sailing that Section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development.